

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BARTOSZ GORZKO,

Plaintiff,

vs.

BJ'S WHOLESALE CLUB, INC., BJ'S
WHOLESALE CLUB PELHAM MANOR
and BJ'S WHOLESALE CLUB
HOLDINGS, INC.,

Defendants.

: CIVIL ACTION
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: JURY TRIAL DEMANDED
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NOTICE FOR REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. § 1441

Defendants, BJ's Wholesale Club, Inc., incorrectly sued herein as "BJ's Wholesale Club, Inc. and BJ's Wholesale Club Pelham Manor," and BJ's Wholesale Club Holdings, Inc., hereby submit notice to the United States District Court for the Southern District of New York for the removal of the above entitled action to this Honorable Court and, in support thereof, respectfully represents:

1. Defendants, BJ's Wholesale Club, Inc., incorrectly sued herein as "BJ's Wholesale Club, Inc. and BJ's Wholesale Club Pelham Manor" (collectively, "the Club"), and BJ's Wholesale Club Holdings, Inc. ("BWCH"), are both corporations organized and existing under the laws of the State of Delaware, having their principal places of business located in the Commonwealth of Massachusetts.

2. Upon information, knowledge and belief, Plaintiff, Bartosz Gorzko, is an adult individual and citizen and resident of the State of New York, Bronx County.

3. At all times material hereto, the Club and BWCH were duly registered to do, and

were doing, business in the State of New York.

4. On or about January 29, 2021, Plaintiff commenced the above action, by filing a Summons and Complaint (collectively, the “Complaint”), true and correct copies of which are attached hereto as **Exhibit “A.”** Plaintiff seeks damages against the Club and BWCH for personal injuries he allegedly sustained in a trip and fall accident occurring at the Club located at 825 Pelham Parkway, Pelham, New York 10803 on August 20, 2020. Plaintiff’s Summons states that Plaintiff resides at 152 Tier Street, Bronx, New York and the Complaint states that Plaintiff resides in Bronx County.

5. At the time the action was filed, neither the Club nor BWCH had notice that the value of Plaintiff’s claims exceeded Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of interest and costs.

6. On or about February 11, 2021, Plaintiff filed an Amended Verified Complaint as against the Club and BWCH, a copy of which is annexed hereto as **Exhibit “B.”** Plaintiff’s Amended Verified Complaint contains similar allegations to those in the Complaint.

7. On or about April 7, 2021, the Club and BWCH received the Amended Verified Complaint.

8. On May 26, 2021, the Club and BWCH filed their Answer to the Amended Verified Complaint. A true and correct copy of the Answer is attached hereto as **Exhibit “C.”**

9. On May 26, 2021, the Club and BWCH filed and served a Notice to Admit, seeking for Plaintiff to admit or deny whether he alleges that his damages, if proven at trial, are in excess of Seventy-Five Thousand (\$75,000.00) dollars, exclusive of interest and costs. A copy of the Club’s and BWCH’s Notice to Admit is attached hereto as **Exhibit “D.”**

10. To date, Plaintiff has failed to respond to the Notice to Admit. As a result, by failing

to respond within the twenty (20) day time period prescribed by Section 3123 of the New York Civil Practice Law and Rules (“CPLR”), all allegations contained therein are deemed admitted by operation of law. See CPLR § 3123.

11. Diversity of citizenship exists between Plaintiff, a citizen and resident of the State of New York, and the Club and BWCH, corporations organized and existing under the laws of the State of Delaware and having their principal places of business in the Commonwealth of Massachusetts.

12. Complete diversity of citizenship exists between the parties and removal is proper pursuant to 28 U.S.C. § 1441, *et seq.*

13. 28 U.S.C. § 1446(b) reads, in pertinent part, that:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 [diversity of citizenship] of this title more than 1 year after commencement of the action.

14. This Notice of Removal is timely under 28 U.S.C. § 1446(b) as it is filed within thirty (30) days after the Club’s and BWCH’s first notice that Plaintiff’s claimed damages, if proven, are valued in excess of Seventy Five Thousand (\$75,000.00) Dollars, exclusive of interest and costs. Moreover, this Notice of Removal is made within one (1) year after the filing of the Complaint on January 29, 2021.

WHEREFORE, the above action now pending against Defendants, BJ's Wholesale Club, Inc. incorrectly sued herein as "BJ's Wholesale Club, Inc. and BJ's Wholesale Club Pelham Manor", and BJ's Wholesale Club Holdings, Inc., in the Supreme Court State of New York, Bronx County, is removed therefrom to this Honorable Court.

Dated: New York, New York
June 29, 2021

Respectfully submitted,

CHARTWELL LAW

BY: *Jarrett L. Warner*
Jarrett L. Warner, Esquire
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